

Practitioner's Docket No. U 016099-9

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INTERNATIONAL APPLICATION NO.	INTERNATIONAL FILING DATE	PRIORITY DATE CLAIMED
PCT/AT2004/000265	23 JULY 2004	25 JULY 2003, etc.
TITLE OF INVENTION		
ADJUSTABLE STOMACH BAND		
APPLICANT(S)		

1. Wolfgang LECHNER

**NOTIFICATION OF ERROR IN PAYMENT OF FEES AS A SMALL ENTITY - CHAPTER I**  
**(37 C.F.R. § 1.28(c))**

*NOTE: 37 C.F.R. § 1.28(c): "(c) How errors in small entity status are excused. If status as a small entity is established in good faith, and fees as a small entity are paid in good faith, in any application or patent, and it is later discovered that such status as a small entity was established in error, or that through error the Office was not notified of a loss of entitlement to small entity status as required by § 1.27(g)(2), the error will be excused upon: compliance with the separate submission and itemization requirements of paragraphs (c)(1) and (c)(2) of this section, and the deficiency payment requirement of paragraph (c)(2) of this section."*

*NOTE: 37 C.F.R. § 1.28(c)(1): "Separate submission required for each application or patent. Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error), required by paragraph (c)(2) of this section, for one application or one patent. Where more than one application or patent is involved, separate submissions of deficiency payments (e.g., checks) and itemizations are required for each application or patent. See § 1.4(b)."*

**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***

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Date:: March 21, 2006

CONNIE YANNOTTI

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- Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

## Erroneous Filing of Small Entity Statement

1. On January 25, 2006, a small entity assertion was erroneously made in this  
[X] application  
[ ] patent
2. This assertion of small entity status in this application and the payment of fee(s) as a small entity was/were made in good faith.
3. It has now been discovered that such fee as a small entity was paid in error.

## Itemization of the Fee(s) Erroneously Paid as Small Entity

**NOTE:** 37 C.F.R. § 1.28(c)(2): "Payment of deficiency owed. The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(i) Calculation of the deficiency owed. The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error;

(ii) Itemization of the deficiency payment. An itemization of the total deficiency payment is required. The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;

(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section."

**NOTE:** 37 C.F.R. § 1.28(c)(3): "Failure to comply with requirements. If the requirements of paragraphs (c)(1) and (c)(2) of this section are not complied with, such failure will either: be treated as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency paper, at the option of the Office."

4. (complete the following applicable item(s))

<u>FEE(S) ERRONEOUSLY PAID AS A SMALL ENTITY</u>	<u>FEE ACTUALLY PAID AS A SMALL ENTITY</u>	<u>DEFICIENCY OWED</u>
<input checked="" type="checkbox"/> Filing fee paid on <u>January 25, 2006</u>	\$ <u>150.00</u>	\$ <u>150.00</u>
<input checked="" type="checkbox"/> Fee for excess claims (over 20) paid on <u>January 25, 2006</u>	\$ <u>100.00</u>	\$ <u>100.00</u>
<input type="checkbox"/> Fee for multiple claims paid on _____	\$ _____	\$ _____
<input type="checkbox"/> Extension of time fee paid on _____	\$ _____	\$ _____
<input type="checkbox"/> The issue fee paid on _____	\$ _____	\$ _____
<input type="checkbox"/> _____ maintenance fee (First, second or third) paid on _____	\$ _____	\$ _____
<input checked="" type="checkbox"/> Other: Non U.S. Search Report	\$ <u>200.00</u>	\$ <u>200.00</u>
<input checked="" type="checkbox"/> Other: Exam Fee	\$ <u>100.00</u>	\$ <u>100.00</u>

**WARNING:** "The deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current fee amount (for other than a small entity) on the date the deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously erroneously paid as a small entity. Where a fee paid in error as a small entity was subject to a fee decrease between the time the fee was paid in error and the time the deficiency is paid in full, the deficiency owed is equal to the amount (previously) paid in error. . . ." 37 C.F.R. § 1.28(c)(2)(i).

**NOTE:** 37 C.F.R. § 1.28(b)(2): "The date when a deficiency payment is paid in full determines the amount of deficiency that is due pursuant to paragraph (c) of this section."

**Total deficiency owed \$ 550.00**

**NOTE:** 37 C.F.R. 1.28(g): "Payment of deficiency operates as notification of loss of status. Any deficiency payment (based on a previous erroneous payment of a small entity fee) submitted under paragraph (c) of this section will be treated under § 1.27(g)(2) as a notification of a loss of entitlement to small entity status."

### Payment of Deficiency

5. The total deficiency owed is paid as follows:

- ☒ Attached is a check in the amount of \$ 550.00
- ☐ Authorization is hereby made to charge the amount of \$ \_\_\_\_\_
- ☐ to Deposit Account No. 12-0425  
A duplicate of this paper is attached.

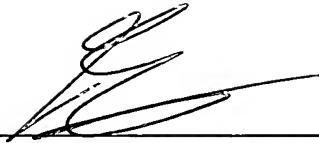
**WARNING:** Credit card information should not be included on this form as it may become public.

- ☒ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above to deposit account 12-0425.

Reg. No.: 25,858

Tel. No.: (212 ) 708-1930

Customer No.: 00140



SIGNATURE OF PRACTITIONER

WILLIAM R. EVANS  
(type or print name of practitioner)

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